

MCI WorldCom agrees with the ILECs that jurisdiction is determined by end-to-end analysis. However, the precedents cited by the ILECs stand only for the principle that the jurisdiction of a telecommunications service is determined by end-to-end analysis of the telecommunications service; they do not support the ILECs' assertion that a wholly separate information service should be considered in analyzing the jurisdiction of the telecommunications service. Indeed, the Commission has consistently stated that when a telecommunications service is used together with an information service, as in the case of Internet access, "we treat the two services separately: the first service is a telecommunications service (e.g., the xDSL-enabled transmission path), and the second service is an information service, in this case Internet access."³³ Thus, contrary to the ILECs' assertions, the location of the Internet servers accessed as part of the information service provided by the ISP is irrelevant to determining the jurisdiction of ADSL or any other telecommunications service.

As ALTS and numerous other commenters pointed out in their petitions to reject or suspend and investigate the ILECs' ADSL tariffs, it is well-established that information service providers such as ISPs are "end users" for the purpose of determining the jurisdiction of a telecommunications service such as ADSL.³⁴ The jurisdiction of an ADSL service used to connect ISP subscriber end users to an ISP POP thus depends on the relative locations of the ISP subscribers and the ISP POP. For

³³Advanced Services Notice at ¶36 (emphasis added).

³⁴See, e.g., GTOC Transmittal No. 1148, Petition to Reject, or to Suspend and Investigate, by the Association for Local Telecommunications Services, May 22, 1998 at 3.

example, if an ISP POP and the ISP subscriber are in the same local calling area, the connecting ADSL service would be classified as a local service. On the other hand, if the ISP subscriber and the ISP POP are in different states, then the ADSL-based telecommunications service provided between the ISP subscriber and the ISP POP would be interstate in nature.

C. Because ISPs are End Users, the State Commissions Will Have a Substantial Role in Evaluating ILEC ADSL Rates

The Commission asks in the Designation Orders whether it should defer to the states the tariffing of retail DSL services.³⁵ In comments to suspend and investigate the ILECs' ADSL tariffs, several parties had stated that the ILECs' ADSL prices were below the costs that competing providers would incur to obtain unbundled loops, cross-connects, collocation space and other facilities from the ILEC, permitting the ILEC to engage in a price squeeze. Northpoint had suggested that the Commission defer to the states the tariffing of ADSL services, arguing that states would be in a better position to evaluate any price squeeze.

MCI WorldCom agrees with Northpoint that inflated ILEC pricing of unbundled elements and collocation space creates a substantial risk of a price squeeze in the market for xDSL services or, for that matter, any telecommunications service. However, the Commission should not defer tariffing of DSL services to the states. To the extent that DSL services are used to provide interstate access services, the Commission should

³⁵GTE Designation Order at ¶12; Pacific Designation Order at ¶10; BellSouth Designation Order at ¶10.

continue to require that DSL services be tariffed at the federal level. As discussed above, HDSL is widely used today to provide special access T1 circuits that IXC's and end users purchase from interstate special access tariffs. The Commission should certainly not relinquish its oversight of HDSL or other interstate access rates without consideration in a full notice and comment rulemaking proceeding.

It is clear, however, that the states will have a significant role in evaluating the ILEC's ADSL rates. Because ISPs and other information service providers are end users, they have the right to purchase telecommunications services, including ADSL, from local, intrastate tariffs. Thus, state oversight of ILEC intrastate ADSL tariffs will be of considerable importance to ISPs, one of the primary customers for the ILEC's ADSL services. MCI WorldCom notes that U S West has acknowledged that its intrastate ADSL services are targeted to ISPs.³⁶

V. Once the Commission Has Found That ADSL Services are Properly Tariffed at the Federal Level, It Should Focus on the Other Issues Outlined in the GTE Suspension Order

- In its order suspending GTOC Transmittal No. 1148, the Commission found that several issues raised by commenters in support of their petitions to reject or suspend and investigate raised substantial questions of lawfulness.³⁷ These issues included (1)

³⁶See http://www.uswest.com/com/customers/enterprise/dsl/fast_facts.html ("Several Internet Service Providers (ISPs) are offering or will soon be offering their customers high-speed access to the Internet using MegaBit Services.")

³⁷In the Matter of GTE Telephone Operations, GTOC Tariff No. 1, GTOC Transmittal No. 1148, Order, CC Docket No. 98-79, released May 29, 1998, at ¶3 (GTE Suspension Order).

whether ADSL constitutes an interstate access service; (2) whether ADSL should be unbundled from GTE's frame relay service pursuant to the Commission's expanded interconnection rules; (3) whether GTE's tariff raises questions regarding the reasonableness and the clarity of the tariff terms and conditions; and (4) whether the rate levels were reasonable.

Of these issues, the Commission designated only the jurisdictional question for investigation. While it is perhaps reasonable for the Commission to defer consideration of the other issues outlined in the GTE Suspension Order until it determines whether it has jurisdiction over ADSL services, the Commission should not allow these "substantial questions of lawfulness" to simply fall by the wayside. Once the Commission has decided the "threshold issue" of whether the ILECs' ADSL tariffs are properly tariffed at the federal level, the Commission should return to the issues listed in the GTE Suspension Order either in the Advanced Services proceeding or in a separate proceeding focused on the terms and conditions under which ILEC ADSL services may be offered.

- In addition to the issues raised in petitions to suspend and investigate the ILEC ADSL tariffs, there appear to be price cap and separations issues that are implicated by ADSL and that should be examined by the Commission. First, while the ILECs characterize their ADSL services as "analogous" to special access services, it is not clear whether the ILECs intend to treat their ADSL services as special access services for price cap purposes or whether it is appropriate to treat ADSL services in this manner.

Nor is it clear in which "High Cap & DDS" subcategory the ILECs plan to include ADSL services.

Second, there may be separations-related issues implicated by ADSL. The ILECs have characterized the high-speed data service that they will provide using ADSL as "analogous" to special access services subject to the "10 percent rule."³⁸ Yet, the same ADSL-equipped loop that is being used to provide this service can continue to be used for ordinary voice local exchange and exchange access services.³⁹ Given that private lines and common lines are distinct separations categories subject to different separations rules,⁴⁰ it is not clear how the ILECs plan to treat ADSL-equipped loops for separations purposes.

³⁸See, e.g., Pacific Bell Direct Case at 13.

³⁹Advanced Services Notice at ¶29

⁴⁰See 47 C.F.R. §36.154(a) - (c).

VI. Conclusion

The Commission should conclude this investigation by finding that the ILECs' ADSL service offerings are properly tariffed at both the federal and state levels. The Commission can reach this conclusion without needing to address the wholly separate issue of whether one particular use of ADSL services -- connecting ISP end users to other end users -- is interstate or intrastate in nature. The Commission should not reach beyond the question presented for investigation to address Internet-related jurisdictional issues in this proceeding.

Respectfully submitted,
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STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct Executed on October 5, 1998.



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CERTIFICATE OF SERVICE

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